

O.C.G.A. § 50-36-1

GEORGIA CODE

TITLE 50. STATE GOVERNMENT

CHAPTER 36. VERIFICATION OF LAWFUL PRESENCE WITHIN UNITED STATES

O.C.G.A. § 50-36-1 (2011)

§ 50-36-1. (For effective date, see note.) Verification requirements, procedures, and conditions; exceptions; regulations; criminal and other penalties for violations

(a) As used in this Code section, the term:

(1) "Agency head" means a director, commissioner, chairperson, mayor, councilmember, board member, sheriff, or other executive official, whether appointed or elected, responsible for establishing policy for a public employer.

(2) "Agency or political subdivision" means any department, agency, authority, commission, or government entity of this state or any subdivision of this state.

(3) "Applicant" means any natural person, 18 years of age or older, who has made application for access to public benefits on behalf of an individual, business, corporation, partnership, or other private entity.

(4) (A) "Public benefit" means a federal benefit as defined in 8 U.S.C. Section 1611, a state or local benefit as defined in 8 U.S.C. Section 1621, a benefit identified as a public benefit by the Attorney General of Georgia, or a public benefit which shall include the following:

- (i) Adult education;
- (ii) Authorization to conduct a commercial enterprise or business;
- (iii) Business certificate, license, or registration;
- (iv) Business loan;
- (v) Cash allowance;
- (vi) Disability assistance or insurance;
- (vii) Down payment assistance;
- (viii) Energy assistance;
- (ix) Food stamps;
- (x) Gaming license;
- (xi) Health benefits;
- (xii) Housing allowance, grant, guarantee, or loan;

- (xiii) Loan guarantee;
- (xiv) Medicaid;
- (xv) Occupational license;
- (xvi) Professional license;
- (xvii) Registration of a regulated business;
- (xviii) Rent assistance or subsidy;
- (xix) State grant or loan;
- (xx) State identification card;
- (xxi) Tax certificate required to conduct a commercial business;
- (xxii) Temporary assistance for needy families (TANF);
- (xxiii) Unemployment insurance; and
- (xxiv) Welfare to work.

(B) Each year before August 1, the Attorney General shall prepare a detailed report indicating any "public benefit" that may be administered in this state as defined in 8 U.S.C. Sections 1611 and 1621 and whether such benefit is subject to SAVE verification pursuant to this Code section. Such report shall provide the description of the benefit and shall be updated annually and distributed to the members of the General Assembly and be posted to the Attorney General's website.

(b) Except as provided in subsection (d) of this Code section or where exempted by federal law, every agency or political subdivision shall verify the lawful presence in the United States of any applicant for public benefits.

(c) This Code section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(d) Verification of lawful presence under this Code section shall not be required:

(1) For any purpose for which lawful presence in the United States is not required by law, ordinance, or regulation;

(2) For assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C. Section 1396b(v)(3), of the alien involved and are not related to an organ transplant procedure;

(3) For short-term, noncash, in-kind emergency disaster relief;

(4) For public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;

(5) For programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the United States Attorney General, in the United States Attorney General's sole and unreviewable discretion after consultation with appropriate federal agencies and departments, which:

(A) Deliver in-kind services at the community level, including through public or private nonprofit agencies;

(B) Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(C) Are necessary for the protection of life or safety;

(6) For prenatal care; or

(7) For postsecondary education, whereby the Board of Regents of the University System of Georgia or the State Board of the Technical College System of Georgia shall set forth, or cause to be set forth, policies regarding postsecondary benefits that comply with all federal law including but not limited to public benefits as described in 8 U.S.C. Section 1611, 1621, or 1623.

(e) (For effective date, see note.) An agency or political subdivision providing or administering a public benefit shall require every applicant for such benefit to:

(1) Provide at least one secure and verifiable document, as defined in Code Section 50-36-2;

(2) Execute a signed and sworn affidavit verifying the applicant's lawful presence in the United States, which affidavit shall state:

(A) The applicant is a United States citizen or legal permanent resident 18 years of age or older; or

(B) The applicant is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act, Title 8 U.S.C., 18 years of age or older lawfully present in the United States and provide the applicant's alien number issued by the Department of Homeland Security or other federal immigration agency; and

(3) The state auditor shall create affidavits for use under this Code section and shall keep a current version of such affidavits on the Department of Audits and Account's official website.

(4) Documents required by this Code section may be submitted electronically, provided the submission complies with Chapter 12 of Title 10.

(f) For any applicant who has executed an affidavit that he or she is an alien lawfully present in the United States, eligibility for public benefits shall be made through the Systematic Alien Verification of Entitlement (SAVE) program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security. Until such eligibility verification is made, the affidavit may be

presumed to be proof of lawful presence for the purposes of this Code section.

(g) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in an affidavit executed pursuant to this Code section shall be guilty of a violation of Code Section 16-10-20.

(h) Verification of citizenship through means required by federal law shall satisfy the requirements of this Code section.

(i) It shall be unlawful for any agency or political subdivision to provide or administer any public benefit in violation of this Code section. On or before January 1 of each year, each agency or political subdivision which administers any public benefit shall provide an annual report to the Department of Community Affairs that identifies each public benefit, as defined in subparagraph (a)(3)(A) of this Code section, administered by the agency or political subdivision and a listing of each public benefit for which SAVE authorization for verification has not been received.

(j) Any and all errors and significant delays by SAVE shall be reported to the United States Department of Homeland Security.

(k) Notwithstanding subsection (g) of this Code section, any applicant for public benefits shall not be guilty of any crime for executing an affidavit attesting to lawful presence in the United States that contains a false statement if said affidavit is not required by this Code section.

(l) In the event a legal action is filed against any agency or political subdivision alleging improper denial of a public benefit arising out of an effort to comply with this Code section, the Attorney General shall be served with a copy of the proceeding and shall be entitled to be heard.

(m) Compliance with this Code section by an agency or political subdivision shall include taking all reasonable, necessary steps required by a federal agency to receive authorization to utilize the SAVE program or any successor program designated by the United States Department of Homeland Security or other federal agency, including providing copies of statutory authorization for the agency or political subdivision to provide public benefits and other affidavits, letters of memorandum of understanding, or other required documents or information needed to receive authority to utilize the SAVE program or any successor program for each public benefit provided by such agency or political subdivision. An agency or political subdivision that takes all reasonable, necessary steps and submits all requested documents and information as required in this subsection but either has not been given access to use such programs by such federal agencies or has not completed the process of obtaining access to use such programs shall not be liable for failing to use the SAVE program or any such successor program to verify eligibility for public benefits.

(n) In the case of noncompliance with the provisions of this Code section by an agency or political subdivision, the appropriations committee of each house of the General Assembly may consider such noncompliance in setting the budget and appropriations.

(o) No employer, agency, or political subdivision shall be subject to lawsuit or liability arising from any act to comply with the requirements of this chapter; provided, however, that the intentional and knowing failure of any

agency head to abide by the provisions of this chapter shall:

(1) Be a violation of the code of ethics for government service established in Code Section 45-10-1 and subject such agency head to the penalties provided for in Code Section 45-10-28, including removal from office and a fine not to exceed \$10,000.00; and

(2) Be a high and aggravated misdemeanor offense where such agency head acts to willfully violate the provisions of this Code section or acts so as to intentionally and deliberately interfere with the implementation of the requirements of this Code section.

The Attorney General shall have the authority to conduct a criminal and civil investigation of an alleged violation of this chapter by an agency or agency head and to bring a prosecution or civil action against an agency or agency head for all cases of violations under this chapter. In the event that an order is entered against an employer, the state shall be awarded attorney's fees and expenses of litigation incurred in bringing such an action and investigating such violation.

HISTORY: Code 1981, § 50-36-1, enacted by Ga. L. 2006, p. 105, § 9/SB 529; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2009, p. 970, § 3/HB 2; Ga. L. 2011, p. 632, § 3/HB 49; Ga. L. 2011, p. 794, §§ 16, 17, 18/HB 87.
